

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

1216

December 10, 2013

The Honorable Tom Wheeler  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20515

Dear Chairman Wheeler:

Last Congress, after more than 60 years, the FCC finally removed the “Fairness Doctrine” from the Code of Federal Regulations. Over the course of its time on the books, FCC Chairmen and Commissioners have acknowledged that it was an intrusion by the FCC into the freedoms of speech and the press that could not be supported by law. Given the widespread calls for the Commission to respect the First Amendment and stay out of the editorial decisions of reporters and broadcasters, we were shocked to see that the FCC is putting itself back in the business of attempting to control the political speech of journalists. It is wrong, it is unconstitutional, and we urge you to put a stop to this most recent attempt to engage the FCC as the “news police.”

On November 1, the Federal Communications Commission issued a Public Notice announcing a field test for the Research Design of a “Multi-Market Study of Critical Information Needs” (the “CIN Study”).<sup>1</sup> The proposed design for the CIN Study<sup>2</sup> shows a startling disregard for not only the bedrock constitutional principles that prevent government intrusion into the press and other news media, but also for the lessons learned by the Commission’s experience with the Fairness Doctrine. Although the Commission’s stated reason for the report is to inform the Commission in taking deregulatory action to lower “market entry barriers for entrepreneurs and other small businesses,”<sup>3</sup> it is hard to read this and see it for anything other than what it is: Fairness Doctrine 2.0.

<sup>1</sup> *The Office of Communications Business Opportunities Announces Market for Critical Information Needs Research Field Test*, MB Docket No. 12-30, Public Notice, DA 13-2126, *rel.* Nov. 1, 2013.

<sup>2</sup> *Office of Communications Business Opportunities Announces Release of Critical Information Needs Research Design*, Public Notice, DA 13-1214, *rel.* May 24, 2013, attaching “Research Design for the Multi-Market Study of Critical Information Needs: Final Research Design,” prepared by Social Solutions International, Inc., Apr. 2013, at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-13-1214A2.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-13-1214A2.pdf) (last checked Nov. 5, 2013) (“CIN Study Design”).

<sup>3</sup> 47 U.S.C. § 257.

The study plans to undertake a “Qualitative Analysis of Providers,” which appears to seek information on how all local news outlets – whether regulated by the FCC or not – select and prioritize news coverage. As laid out in the study design, the study intends to “ascertain the process by which stories are selected, station priorities (for content, production quality, and populations served), perceived station bias, perceived percent of news dedicated to each of the eight CINs, and perceived responsiveness to underserved populations.”<sup>4</sup> Specifically, the study plans to ask journalists, station owners, and corporate media group owners about their news philosophy, what factors influence story selection, and whether and why story ideas are rejected in the newsroom.

The Commission is not a research institution but rather a government entity with authority to regulate some of the targets of the CIN Study. The Commission has no business probing the news media’s editorial judgment and expertise, nor does it have any business in prescribing a set diet of “critical information.” These goals are plainly inappropriate and are at bottom an incursion by the government into the constitutionally protected operations of the professional news media.

Beyond the fact that many of the goals of the study are inappropriate, we are equally concerned by the Commission’s failure to state an adequate statutory basis for its action. The Commission has not offered any legitimate justification for how a study of the “critical information needs” of communities directly contributes to its statutory duties, *i.e.*, to review the impact of law on market entry barriers for entrepreneurs and other small businesses.

Finally, we are also interested in how the Commission reached its determination that the scope of the proposed study should be limited to Columbia, SC. The original scope of the study would have covered multiple markets of varying sizes, but ultimately the FCC decided to focus its initial efforts in just one city. Below, we seek answers as to the Commission’s rationale for this decision.

In order to shed light on how the Commission reached the decision that the CIN Study, at a cost to taxpayers of \$900,000, would be resources well spent,<sup>5</sup> and also to understand how it furthers the Commission’s statutory goal of “identifying and eliminating... market entry barriers for entrepreneurs and other small businesses” under Section 257, we request that you respond to each of the questions below by January 10<sup>th</sup> and before proceeding further with any field test of the study design:

1. How does the statutory language of Section 257 support the Commission’s contention that it has authority to question the news media about editorial discretion and the content it chooses to produce?
2. What other purposes or proceedings are the CIN Study designed to serve? If the CIN Study is intended to serve other purposes or proceedings, detail the statutory provisions that authorize such an undertaking and how the study will be used to further them.

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<sup>4</sup> CIN Study Design at 12.

<sup>5</sup> Make, Jonathan, “FCC, Having Spent \$209,000 on Barriers-to-Entry Preliminaries, May Spend \$918,000 for Research,” *Communications Daily*, May 29, 2013, at 2-3.

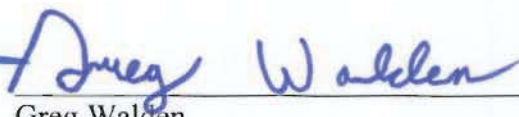
3. What steps are being taken to ensure that the CIN Study respects the First Amendment rights of the news media to speak, and audiences to receive, information unfettered by direct or indirect intrusion by the government?
4. How, if at all, will the CIN Study results be used in the Commission's quadrennial media ownership proceeding?
5. How will the results of the CIN Study be applied practically? Does the Commission expect to offer governmental endorsement of the results and recommendations from the study? Will the results and recommendations for news coverage be further incorporated into regulation of broadcast journalism?
6. The press has reported that the Commission expects to spend north of \$900,000 for the full study. Does that include design and implementation of the field test? If not, how much money has been allocated to the field test, and how will the field test impact the cost of later phases of the full study?
7. How do the changes to the study design respond to the public comments made in May 2013? Detail the considerations that informed the changes to the study design as well as the considerations that drove the selection of Columbia, SC as the appropriate field test site.

The First Amendment to the U.S. Constitution is the beacon of freedom that makes the United States unique among the world's nations. We urge you to take immediate steps to suspend this effort and find ways that are consistent with the Communications Act and the Constitution to serve the Commission's statutory responsibilities. If you have any questions, please contact David Redl or Grace Koh with the Committee on Energy and Commerce at (202) 225-2927.

Sincerely,



Fred Upton  
Chairman



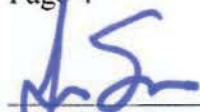
Greg Walden  
Chairman  
Subcommittee on Communications & Technology




Joe Barton  
Chairman Emeritus




Marsha Blackburn  
Vice Chair


  
John Shimkus  
Member

  
Lee Terry  
Member


  
Mike Rogers  
Member

  
Steve Scalise  
Member

  
Bob Latta  
Member

  
Leonard Lance  
Member

  
Brett Guthrie  
Member

  
Cory Gardner  
Member

  
Mike Pompeo  
Member

  
Adam Kinzinger  
Member

  
Billy Long  
Member

  
Renee Ellmers  
Member

cc: The Honorable Henry A. Waxman, Ranking Member  
The Honorable Anna Eshoo, Ranking Member, Subcommittee on Communications & Technology  
Commissioner Mignon Clyburn, FCC  
Commissioner Jessica Rosenworcel, FCC  
Commissioner Ajit Pai, FCC  
Commissioner Michael O'Rielly, FCC



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

February 14, 2014

The Honorable Fred Upton  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Upton:

Thank you for writing with your views regarding the field test of the Research Design for the Commission's Office of Communications Business Opportunities (OCBO) Multi-Market Study of Critical Information Needs (Research Design). I understand this is a matter of importance to you, as it is to me, and appreciate the opportunity to provide additional information about the development and conduct of the Research Design.

The Commission has no intention of regulating political or other speech of journalists or broadcasters by way of this Research Design, any resulting study, or through any other means. The development of the Research Design was intended to aid the Commission in meeting its obligations under Section 257 of the Communications Act. Section 257 directs the Commission to identify and eliminate "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services." The statutory provision expressly links our obligation to identify market barriers with the responsibility to "promote the policies and purposes of this chapter favoring diversity of media voices." Finally, Section 257 requires the Commission to review and report to Congress on "any regulations prescribed to eliminate barriers within its jurisdiction ... that can be prescribed consistent with the public interest, convenience, and necessity."

Under the statutory reporting requirement of Section 257, the Commission studies market conditions to understand the scope and extent of market entry barriers. Past studies by the Commission pursuant to Section 257, include *History of the Broadcast Licensee Application Process; Utilization Rates, Win Rates, and Disparity Ratios for Broadcast Licenses Awarded by the FCC; Logistic Regression Models of the Broadcast Licensee Award Process for Licenses Awarded by the FCC*; and the *FCC Econometric Analysis of Potential Discrimination Utilization Ratios for Minority and Women-Owned Companies in FCC Wireless Spectrum Auctions*. The Research Design is a precursor to any formal study. If used in any way, its goal would be similar to those of past reports – seeking to identify whether potential market barriers exist and, if so, whether those barriers affect diversity of media voices.

After the selection of the contractor for the Research Design, the Commission put the design out for comment, inviting input from all stakeholders. Your letter and the opportunity for public review surfaced a number of issues and modification of the Research Design may be necessary. My staff has engaged in a careful and thorough review of the Research Design with the contractor to ensure that the inquiries closely hew to the mandate of Section 257. While the Research Design is a tool intended to help the Commission consider effective, pro-competitive policies that would encourage new entrants, its direction need not go beyond our responsibilities. We continue to work with the contractor to adapt the study in response to these concerns and expect to complete this work in the next few weeks. As the revisions that we may implement likely will require cost reassessments, we will provide you with further details regarding cost and methodology as soon as they are available.

Again, thank you for providing me with your views on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Wheeler", with a stylized, cursive script.

Tom Wheeler

cc: The Honorable Mignon Clyburn, Commissioner  
The Honorable Jessica Rosenworcel, Commissioner  
The Honorable Ajit Pai, Commissioner  
The Honorable Michael O'Rielly, Commissioner



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

February 14, 2014

The Honorable Greg Walden  
Chairman  
Subcommittee on Communications and Technology  
Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Walden:

Thank you for writing with your views regarding the field test of the Research Design for the Commission's Office of Communications Business Opportunities (OCBO) Multi-Market Study of Critical Information Needs (Research Design). I understand this is a matter of importance to you, as it is to me, and appreciate the opportunity to provide additional information about the development and conduct of the Research Design.

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The Honorable Jessica Rosenworcel, Commissioner  
The Honorable Ajit Pai, Commissioner  
The Honorable Michael O'Rielly, Commissioner



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

February 14, 2014

The Honorable Joe Barton  
Chairman Emeritus  
Committee on Energy and Commerce  
U.S. House of Representatives  
2107 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Emeritus Barton:

Thank you for writing with your views regarding the field test of the Research Design for the Commission's Office of Communications Business Opportunities (OCBO) Multi-Market Study of Critical Information Needs (Research Design). I understand this is a matter of importance to you, as it is to me, and appreciate the opportunity to provide additional information about the development and conduct of the Research Design.

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The Honorable Ajit Pai, Commissioner  
The Honorable Michael O'Rielly, Commissioner



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

February 14, 2014

The Honorable Marsha Blackburn  
Vice Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
217 Cannon House Office Building  
Washington, D.C. 20515

Dear Vice Chairman Blackburn:

Thank you for writing with your views regarding the field test of the Research Design for the Commission's Office of Communications Business Opportunities (OCBO) Multi-Market Study of Critical Information Needs (Research Design). I understand this is a matter of importance to you, as it is to me, and appreciate the opportunity to provide additional information about the development and conduct of the Research Design.

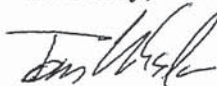
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The Honorable Michael O'Rielly, Commissioner



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

February 14, 2014

The Honorable Renee Ellmers  
Congresswoman  
U.S. House of Representatives  
426 Cannon House Office Building  
Washington, D.C. 20515

Dear Congresswoman Ellmers:

Thank you for writing with your views regarding the field test of the Research Design for the Commission's Office of Communications Business Opportunities (OCBO) Multi-Market Study of Critical Information Needs (Research Design). I understand this is a matter of importance to you, as it is to me, and appreciate the opportunity to provide additional information about the development and conduct of the Research Design.

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The Honorable Ajit Pai, Commissioner  
The Honorable Michael O'Rielly, Commissioner



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

February 14, 2014

The Honorable Cory Gardner  
U.S. House of Representatives  
213 Cannon House Office Building  
Washington, D.C. 20515

Dear Congressman Gardner:

Thank you for writing with your views regarding the field test of the Research Design for the Commission's Office of Communications Business Opportunities (OCBO) Multi-Market Study of Critical Information Needs (Research Design). I understand this is a matter of importance to you, as it is to me, and appreciate the opportunity to provide additional information about the development and conduct of the Research Design.

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OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

February 14, 2014

The Honorable Brett Guthrie  
U.S. House of Representatives  
308 Cannon House Office Building  
Washington, D.C. 20515

Dear Congressman Guthrie:

Thank you for writing with your views regarding the field test of the Research Design for the Commission's Office of Communications Business Opportunities (OCBO) Multi-Market Study of Critical Information Needs (Research Design). I understand this is a matter of importance to you, as it is to me, and appreciate the opportunity to provide additional information about the development and conduct of the Research Design.

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

February 14, 2014

The Honorable Adam Kinzinger  
U.S. House of Representatives  
1221 Longworth House Office Building  
Washington, D.C. 20515

Dear Congressman Kinzinger:

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Again, thank you for providing me with your views on this matter.

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Tom Wheeler

cc: The Honorable Mignon Clyburn, Commissioner  
The Honorable Jessica Rosenworcel, Commissioner  
The Honorable Ajit Pai, Commissioner  
The Honorable Michael O'Rielly, Commissioner



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

February 14, 2014

The Honorable Leonard Lance  
U.S. House of Representatives  
133 Cannon House Office Building  
Washington, D.C. 20515

Dear Congressman Lance:

Thank you for writing with your views regarding the field test of the Research Design for the Commission's Office of Communications Business Opportunities (OCBO) Multi-Market Study of Critical Information Needs (Research Design). I understand this is a matter of importance to you, as it is to me, and appreciate the opportunity to provide additional information about the development and conduct of the Research Design.

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

February 14, 2014

The Honorable Robert Latta  
Vice Chairman  
Subcommittee on Communications and Technology  
Committee on Energy and Commerce  
U.S. House of Representatives  
2448 Rayburn House Office Building  
Washington, D.C. 20515

Dear Vice Chairman Latta:

Thank you for writing with your views regarding the field test of the Research Design for the Commission's Office of Communications Business Opportunities (OCBO) Multi-Market Study of Critical Information Needs (Research Design). I understand this is a matter of importance to you, as it is to me, and appreciate the opportunity to provide additional information about the development and conduct of the Research Design.

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

February 14, 2014

The Honorable Billy Long  
U.S. House of Representatives  
1541 Longworth House Office Building  
Washington, D.C. 20515

Dear Congressman Long:

Thank you for writing with your views regarding the field test of the Research Design for the Commission's Office of Communications Business Opportunities (OCBO) Multi-Market Study of Critical Information Needs (Research Design). I understand this is a matter of importance to you, as it is to me, and appreciate the opportunity to provide additional information about the development and conduct of the Research Design.

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

February 14, 2014

The Honorable Mike Pompeo  
U.S. House of Representatives  
107 Cannon House Office Building  
Washington, D.C. 20515

Dear Congressman Pompeo:

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

February 14, 2014

The Honorable Mike Rogers  
U.S. House of Representatives  
2112 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Rogers:

Thank you for writing with your views regarding the field test of the Research Design for the Commission's Office of Communications Business Opportunities (OCBO) Multi-Market Study of Critical Information Needs (Research Design). I understand this is a matter of importance to you, as it is to me, and appreciate the opportunity to provide additional information about the development and conduct of the Research Design.

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FEDERAL COMMUNICATIONS COMMISSION  
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February 14, 2014

The Honorable Steve Scalise  
U.S. House of Representatives  
2338 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Scalise:

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

February 14, 2014

The Honorable John Shimkus  
U.S. House of Representatives  
2452 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Shimkus:

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February 14, 2014

The Honorable Lee Terry  
U.S. House of Representatives  
2266 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Terry:

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